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ORIGINAL

Via Fax (212) 805-6382

Wednesday 23 January 2008

Honorable Victor Marrero USDJ  
 United States District Court  
 Southern District of New York  
 500 Pearl Street, Chambers 660  
 New York, NY 10007

JAN 24 2008

Re: Teachers4Action et al v. Bloomberg et al, 08-CV-0548 (VM)

Honorable Judge:

I represent Plaintiffs in this action. This fax letter is being sent in accordance with Your Honor's Individual Rules 1. C. and II. A. (i) to request an expedited Hearing on an Order to Show Cause with regard to evidence preservation and other emergent relief (as explained below) and (ii) to request a Pre-Motion and/or Rule 16 Conference with regard to certain issues for which expedited discovery is warranted pursuant to FRCP 26 (d) (2).

#### **Procedural Issues – Issue has Already been Joined**

The Complaint was filed on Jan. 21<sup>st</sup>, Docket # assigned Jan. 22<sup>nd</sup> and the Complaint was served on Defendants Michael Bloomberg ("Bloomberg"), Joel Klein ("Klein") and NYC Department of Education ("DOE") on Jan. 22<sup>nd</sup>. The electronic version of the complaint was uploaded to [caseopenings@nysd.uscourts.gov](mailto:caseopenings@nysd.uscourts.gov) and I am awaiting the case being formally opened so the Returns of Service can be filed.

#### **Brief Description of the Case for Which Emergent Relief is Necessary**

Plaintiffs' claims are predicated on acts by Defendants Bloomberg, Klein and DOE through which a scheme was created, implemented or advanced that discriminates against NYC's most qualified Teachers. The objective is/was to reduce salaries by forcing Teachers to quit or be fired. This is/was accomplished through the creation or use of "Temporary Reassignment Centers" ("Rubber Rooms") to which the Targeted Teachers are confined. The Targeted Teachers are removed from classes, stripped of teaching responsibilities and confined to a Rubber Room, where they wait until charges are brought or they are coerced into accepting deals that include fines and can lead to their terminations. Currently almost 1,000 Teachers languish in Rubber Rooms in violation of their due process rights and the chance to clear their names and be restored to their classrooms. The Rubber Rooms constitute racist and discriminatory policies and are the functional equivalent of modern day "internment camps" where Targeted Teachers are banished for months, or even years, before they can fight unfounded charges. The Rubber Rooms also undermine sound education policies and deprive students of qualified competent Teachers. The Rubbers Rooms process is part of the systematic targeting of a particular group of Teachers in violation of Federal laws, including among others, the 5<sup>th</sup> and 14<sup>th</sup> Amendments, 42 U.S.C. § 2000 e, 29 U.S.C. § 621 ("Age Discrimination"), 42 U.S.C. § 1981 ("Civil Rights Act of 1991"), 18 U.S.C. § 1962 et seq. ("RICO"), relevant New York State laws as well as NY and Federal laws related to misuse of public funds. See Introduction, pages 1 – 2 of complaint.

The Targeted Teachers are accused of a variety of false charges, including but not limited to their (i) allegedly being insubordinate, (ii) their work allegedly being substandard, (iii) their allegedly

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being physically or emotionally abusive to students or (iv) any other allegedly improper conduct. See *Complaint*, ¶ 18. Once accused of the false charges the Targeted Teachers are immediately “re-assigned” to The Rubber Rooms. See *Complaint*, ¶ 19. The Targeted Teachers are then (i) removed from classes, (ii) stripped of teaching responsibilities and (iii) reassigned to a Rubber Room. See *Complaint* ¶ 21. The Targeted Teachers are (i) those who were over a certain minimum age, (ii) those who had achieved a high pay and benefits level and who had been employees of the DOE for more than a dozen years, (iii) those who dared to challenge and/or question DOE practices and / or the “Rubber Room” procedures, (iv) whistle blowers and (v) those who dared to demand their rights, including seniority transfers and/or due process rights. See *Complaint*, ¶ 22. The Targeted Teachers are forced to wait in the Rubber Rooms without due process and the chance to clear their names and be restored to their classrooms. See *Complaint*, ¶ 23. Another goal of the Rubber Room process is to coerce, harass, intimidate and terrorize the Targeted Teachers so that they will be fearful for their personal and professional well-being and will then retire or resign or be “forced” to accept deals involving ruinous fines or termination. Once in the Rubber Rooms, the Targeted Teachers are forced to wait until charges are brought, or until they agree to deals that lead to fines, improper charges and/or records placed in their permanent files and can also include termination. See *Complaint*, ¶ 24.

Instead of being reassigned to administrative duties in their own schools, or receiving a suspension with pay where the Targeted Teachers would be free to stay at home, Targeted Teachers are instructed they must report to a pre-selected Rubber Room. Once at the Rubber Room, the Targeted Teachers are “confined” from morning to afternoon every day, until the DOE gets around to charging them and gives them due process. In essence, Targeted Teachers are DOE “prisoners” and every day they suffer ongoing, immediate and irreparable harm.

### **Facts Related to Need for Emergent Relief**

Several factors that lead Plaintiffs to making this request of Your Honor for emergent relief.

**First** - There is a need to preserve, account for and get access to certain evidence that is in Defendants’ possession, much of which is evidence that dates back 7 – 10 years. The evidence is in the form of actual documents maintained in potentially 50 – 100 offices located throughout the Five Boroughs, including NYC administrative/government offices, NYC School, District and Regional Offices for which an Evidence Preservation Order would be the most effective way to insure preservation of evidence and reduce the possibility of inadvertence or intentional spoliation. Evidence is maintained on scores of computers and servers, which are at risk of being written over and lost, unless immediate preservation action is taken. Under separate submission, in advance of the requested Conference, Plaintiffs will submit a proposed list of categories of documents for which they submit an Evidence Preservation Order is warranted.

**Second** - Certain Targeted Teachers need expedited access to certain documents. As early as Monday Jan. 28<sup>th</sup> some Targeted Teachers have to defend themselves in administrative processes based on the type of unfounded/false charges, upon which the complaint is predicated. Those Teachers have repeatedly tried to get access to evidence, i.e. documents related to allegations in the complaint, which they need to defend themselves. To date, Defendants have withheld documents and without an Order from this Court, Defendants will apparently not disclose the documents that would exonerate the Targeted Teachers. In addition to Teachers whose hearing



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start next week, other Targeted Teachers have also been deprived of evidence and documents they need to defend themselves. The evidence is needed for closing submissions or to re-open hearings before imposition of findings / judgments, as referenced in the complaint, which lead to ruinous fines and possible termination. The Court should note, those Plaintiffs as to whom these emergent issues exist are representative of the broader group for which this relief is also needed. Plaintiffs are systematically “bullied” into making deals or being found guilty in what Plaintiffs describe as “Kangaroo Courts” where they are charged with conduct or offenses of which they are innocent but as to which they are unable to defend themselves because Defendants withhold documents and other evidence. *Samples of charges and persons/entities involved related to evidence preservation/production issues are attached for Court consideration.*

**Third** - Plaintiffs need Court’s permission, pursuant to FRCP 26 (d) (2), to serve subpoenas on former NYC officials, employees of the DOE and representatives of the United Federation of Teachers, whose evidence needs to be preserved, who have knowledge of documents that need to be preserved and who have also knowledge that would expedite the issues in this case, many of which can be resolved through potential Motions for Partial Summary Judgment.

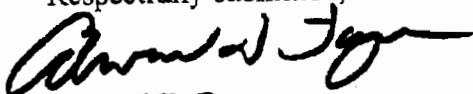
**Fourth** - Every day the Targeted Teachers are confined in Rubber Rooms, their rights are violated. Were this a Criminal Case, Plaintiffs would file for a “*Writ of Habeas Corpus*”, pursuant to 28 U.S.C.A. §§ 2241 et seq. The fact that this is not a criminal case, does not negate the fact that Plaintiffs members are targeted and confined in specific locations 7 hours per day, 5 days per week, 44 weeks per years, just as if they were sentenced under criminal statutes. Plaintiffs submit that, as the evidence in this case unfold, the practice of „Rubber Rooms“ may in fact be found by Your Honor to be „*restraint in violation of the Constitution, or of any treaty or law of the United States*“ for which relief could be sought. In the meantime, as a result of the Rubber Room practice, Plaintiffs and hundreds of other innocent Teachers are unlawfully „*confined*“ and „*restrained*“. Plaintiffs submit that the confinement and restraints must end.

### Conclusion

As the Court will see in the coming days or weeks, the wrongful acts being taken against Plaintiffs Targeted Teachers is worse than what is described in the complaint. Plaintiffs’ members are in fear of imminent retaliation, they suffer physical and psychological trauma and now they face potential immediate and irreparable harm for which equitable relief is justified. The relief sought by Plaintiffs creates no prejudice to Defendants but if not granted will result in severe prejudice to Plaintiffs. In view of the foregoing, Plaintiffs respectfully pray that the Court schedule an expedited conference at its earliest convenience


Thank you for the Court’s consideration in this regard.

Respectfully submitted,



Edward D. Fagan

Cc: Office of Corporation Counsel – via Fax  
 Attachments – 2 Pages of Sample Charges

The parties are directed to address the matter set forth above to Magistrate Judge <u>Arthur J. Beck</u> , to whom this dispute has been referred for resolution, as well as for supervision of remaining pretrial proceedings, establishing case management schedules as necessary, and settlement.	
SO ORDERED.	
1-24-08 Date	 VICTOR MARRERO, U.S.D.J.